

1 Luanne Sacks (SBN 120811)
 2 lsacks@srclaw.com
 3 Michele Floyd (SBN 163031)
 4 mfloyd@srclaw.com
 5 Robert B. Bader (SBN 233165)
 6 rbader@srclaw.com
 7 SACKS, RICKETTS & CASE LLP
 8 177 Post Street, Suite 650
 9 San Francisco, CA 94108
 10 Telephone: 415-549-0580
 11 Facsimile: 415-549-0640

12 Attorneys for Defendant
 13 ASUS COMPUTER INTERNATIONAL,
 14 incorrectly sued as ASUS Computer International
 15 (North America), Inc.

16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA**

18 JOSEPH CARLOTTI, individually and on
 19 behalf of all others similarly situated,

20 Plaintiff,

21 v.

22 ASUS COMPUTER INTERNATIONAL
 23 (NORTH AMERICA), INC., ASUSTEK
 24 COMPUTER INC., and DOES 1 TO 50,

25 Defendants.

26 CASE NO.

27 [Alameda County Superior Court Case No.
 28 RG18903641]

29 **DEFENDANT ASUS COMPUTER
 30 INTERNATIONAL'S NOTICE OF
 31 REMOVAL OF CIVIL ACTION UNDER
 32 28 U.S.C. SECTION 1332(D) (CLASS
 33 ACTION FAIRNESS ACT)**

34 **NOTICE OF REMOVAL**

35 TO THE CLERK OF THE ABOVE-ENTITLED COURT, THE PARTIES, AND ALL
 36 ATTORNEYS OF RECORD:

37 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332(d), 1367, 1441(a), 1446,
 38 and 1453, Defendant ASUS Computer International, incorrectly sued as ASUS Computer
 39 International (North America) Inc., ("ACI") hereby removes to this Court the state court action
 40 described below, pending as case number RG18903641 in the Superior Court of California,
 41 Alameda County ("State Court Action"). The following statement is submitted pursuant to 28
 42 U.S.C. § 1446(a):

1 **I. FACTUAL BACKGROUND**

2 1. On or about May 4, 2018, Plaintiff Joseph Carlotti (“Plaintiff”) filed a class action
 3 complaint (“Complaint”) and thereby commenced the State Court Action in the Superior Court of
 4 the State of California for Alameda County, entitled *Joseph Carlotti v. ASUS Computer*
 5 *International (North America), Inc., et al.* ACI was served with the Complaint on May 8, 2018.
 6 ACI is informed and believes that Defendant ASUSTeK Computer Inc. (“ASUSTeK”) has not
 7 been served with the Complaint. As required by 28 U.S.C. § 1446(a), a copy of the docket and all
 8 process, pleadings, and orders served upon ACI with respect to the State Court Action are
 9 attached hereto as **Exhibits A and B**.

10 2. The allegations of the Complaint, attached hereto as **Exhibit A**, are incorporated
 11 by reference as though set forth fully herein without admitting to any of them.¹ The Complaint is
 12 styled as a nationwide class action complaint pursuant to California Code of Civil Procedure
 13 section 382, the state statute authorizing an action to be brought by one or more representative
 14 persons as a class action. **Exhibit A** (Complaint), ¶ 83, Prayer for Relief.

15 3. Plaintiff alleges that he purchased an ACI ROG Strix GL502VS model laptop that
 16 suffered what he terms a “Power Defect,” defined in the Complaint as an alleged defect that
 17 causes: “(1) the Laptops’ battery to drain during use, even when the Laptop is connected to an
 18 electrical outlet; (2) significant reductions in computational performance when low on battery
 19 power, or when the battery is removed even if the Laptop is connected to an electrical outlet; and
 20 (3) accelerated degradation of the Laptops’ batteries.” **Exhibit A** (Complaint), ¶ 2.

21 4. Plaintiff further alleges that the Power Defect was a “uniform[] defect” that existed
 22 in two ACI laptop models: the ROG Strix GL502VSK model that he purchased and the ROG
 23 Strix GL502VS model (collectively the “Laptops”). **Exhibit A** (Complaint), ¶¶ 1, 53.

24 5. Plaintiff further alleges that defendants misrepresented the nature of the Laptops’
 25 cooling systems in their advertising materials and that the Laptops were prone to overheating.

26
 27

¹ This Notice of Removal is based on the allegations of the Complaint, as is required for purposes
 28 of analyzing removability. ACI believes that the allegations are without merit, and will dispute
 them at an appropriate time.

1 **Exhibit A** (Complaint), ¶ 6.

2 6. Based on these basic facts, the Complaint alleges nine causes of action: (1) Breach
3 of Express Warranty (Count One); (2) Breach of the Implied Warranty of Merchantability (Count
4 Two); (3) Violations of the Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301, *et seq.*) (Count
5 Three); (4) Deceit and Fraudulent Concealment (Count Four); (5) Unjust Enrichment (Count
6 Five); (6) Violations of the Consumer Legal Remedies Act (California Civil Code §§ 1750, *et
7 seq.*) (Count Six); (7) Violations of the False Advertising Law (California Business and
8 Professions Code §§ 17500, *et seq.*) (Count Seven); (8) Violations of the Song-Beverly Consumer
9 Warranty Act (California Civil Code §§ 1790, *et seq.*) (Count Eight); and (9) Violations of the
10 Unfair, Unlawful and Deceptive Trade Practices Act (Business and Professions Code §§ 17200, *et
11 seq.*) (Count Nine).² *See generally Exhibit A* (Complaint), ¶¶ 93-203.

12 7. Plaintiff alleges that he is a resident of Rocklin, California. **Exhibit A**
13 (Complaint), ¶ 13.

14 8. ACI is a California corporation, with its principal place of business in Fremont,
15 California. *See Declaration of Gabriel Meng (“Meng Decl.”), ¶ 3*, attached hereto as **Exhibit D**
16 and incorporated herein by this reference; **Exhibit A** (Complaint), ¶ 14.

17 9. Plaintiff alleges that defendant ASUSTeK is a Taiwanese corporation
18 headquartered in Taipei, Taiwan. **Exhibit A** (Complaint), ¶ 15.

19 10. Aside from the documents contained within **Exhibits A** and **B**, ACI has not been
20 served with any other process, pleadings, or orders in the State Court Action.

21 11. Aside from a Case Management Conference scheduled for September 18, 2018,
22 there are no other upcoming proceedings scheduled in the State Court Action.

23 **II. GROUNDS FOR FEDERAL JURISDICTION AND REMOVAL**

24 12. A defendant may remove any civil action that is brought in a state court over
25 which the United States district courts have original jurisdiction. *See* 28 U.S.C. § 1441(a).

27

28 ² The Complaint erroneously lists two “seventh” causes of action. The “Counts” denoted in this
Notice reflect the accurate number of causes of action and list the causes of action in the order in
which they appear.

1 13. Pursuant to 28 U.S.C. section 1332, as amended by the Class Action Fairness Act
 2 (“CAFA”), original federal jurisdiction extends over putative class actions commenced after
 3 February 18, 2005—the effective date of CAFA—where: (1) the proposed class consists of more
 4 than 100 members in the aggregate; (2) any member of the proposed class is a citizen of a state
 5 different from any defendant (*i.e.*, where minimal diversity exists); and (3) the amount in
 6 controversy is \$5 million or more, aggregating all claims, and exclusive of interests and costs.
 7 *See* 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B), 1332(d)(6).

8 14. While there are a number of exceptions to this rule of original jurisdiction
 9 contained in 28 U.S.C. section 1332(d)(3)-(5), (9), none of those exceptions are applicable here.

10 15. CAFA applies to the State Court Action because the State Court Action was
 11 commenced on or around May 4, 2018, after CAFA’s February 18, 2005 effective date. *See*
 12 Notes to 28 U.S.C. §§ 1332, 1453 (“The Amendments made by this Act shall apply to any civil
 13 action commenced on or after the date of enactment by this Act [February 18, 2005]”), citing Pub.
 14 L. 109-2, §9, 119 Stat. 14. In addition, the State Court Action is a “class action” within the
 15 meaning of CAFA because it is a “civil action filed under” California Code of Civil Procedure
 16 section 382 (**Exhibit A** (Complaint), ¶ 83, Prayer for Relief), which is a “rule of judicial
 17 procedure authorizing an action to be brought by 1 or more representative persons as a class
 18 action.” *See* 28 U.S.C. § 1332(d)(1)(B) (“the term ‘class action’ means any civil action filed
 19 under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial
 20 procedure authorizing an action to be brought by 1 or more representative persons as a class
 21 action”); *see also* 28 U.S.C. § 1453(a) (stating that as it applies to removal of class actions, the
 22 term “‘class action’ ... shall have the meaning[] ... under section 1332(d)(1)”). Based on the
 23 facts as alleged, there is no question that there are more than 100 members of the putative class,
 24 that minimal diversity between the class and Defendants exists and that the \$5,000,000
 25 jurisdictional minimum is satisfied such that removal of the State Court Action to this Court is
 26 proper.

27 A. **Class Numerosity**

28 16. Plaintiff alleges a class consisting of “[a]ll persons in the United States who

1 purchased one or more ASUS GL502VS or GL502VSK laptops.” **Exhibit A** (Complaint), ¶ 83.
 2 Plaintiff further alleges that “[t]he Proposed Classes consist of thousands of owners of Laptops,
 3 making joinder of each Proposed Class member impracticable.” **Exhibit A** (Complaint), ¶ 87.
 4 Plaintiff therefore alleges that the number of putative class members exceeds 100. And, in fact,
 5 ACI’s regularly maintained business records confirm that ACI sold 23,196 Laptops during the
 6 four year period preceding the filing of the Complaint. *See Exhibit D* (Meng Decl.), ¶ 5.
 7 Accordingly, based on both the allegations of the Complaint and ACI’s regularly maintained
 8 business records, the putative class as defined in the Complaint consists of more than 100
 9 members and CAFA’s numerosity requirement is satisfied.

10 **B. Minimal Diversity**

11 17. In addition, CAFA’s requirement for minimal diversity, set forth in 28 U.S.C.
 12 sections 1332(d)(2) and (d)(7), must be present. CAFA requires only that at least one named
 13 plaintiff or putative class member be diverse from at least one of the named defendants based
 14 upon the citizenship of the defendants. 28 U.S.C. §§ 1332 (d)(1)(D); 1332(d)(2)(A). Plaintiff
 15 brings his claims on behalf of “all persons in the United States who purchased one or more ASUS
 16 . . . Laptops.” **Exhibit A** (Complaint), ¶ 83. Plaintiff purports to represent a nationwide class
 17 which thus includes class members residing in all fifty states. And, ACI in fact sells the Laptops
 18 nationwide. *See Exhibit D* (Meng Decl.), ¶ 4. CAFA’s minimal diversity requirement is
 19 satisfied because Plaintiff alleges that he and ACI are California residents, that unserved
 20 defendant ASUSTeK is a resident of Taiwan and that the putative class members are residents of
 21 all fifty states. **Exhibit A** (Complaint), ¶¶ 14, 15, 83. Accordingly, at least one defendant is a
 22 citizen of a state that is different from at least one member of the putative class. *See Swearingen*
 23 *v. Yucatan Foods, L.P.*, 24 F. Supp. 3d 889, 895 (N.D. Cal. 2014), *on reconsideration*, 59 F.
 24 Supp. 3d 961 (N.D. Cal. 2014) (finding minimal diversity requirement satisfied because claims
 25 were asserted on behalf of a “proposed class of consumers throughout the United States”).

26 **C. Amount in Controversy**

27 18. The ultimate inquiry is what amount is put “in controversy” by the complaint, not
 28 what a defendant will actually owe. *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th

1 Cir. 2010) (holding that the amount in controversy is “simply an estimate of the total amount in
 2 dispute, not a prospective assessment of defendant’s liability” or “proof of the amount the
 3 plaintiff will recover.”); *Ray v. Wells Fargo Bank, N.A.*, No. CV 11-1477 AHM (JCx), 2011 WL
 4 1790123, at *5 (C.D. Cal. May 9, 2011) (citing *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp.
 5 2d 1199, 1204-05 (E.D. Cal. 2008)); *see also Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117
 6 (9th Cir. 2004) (“The parties need not predict the trier of fact’s eventual award with one hundred
 7 percent accuracy.”). “No antiremoval presumption attends cases invoking CAFA’ because
 8 ‘Congress enacted [CAFA] to facilitate adjudication of certain class actions in federal court.’”
 9 *Adams v. Toys ‘R’ Us - Delaware, Inc.*, No. 14-CV-05550-MEJ, 2015 WL 395214, at *2 (N.D.
 10 Cal. Jan. 29, 2015) (quoting *Dart Cherokee Basin Operating Co., LLC v. Owens*, --- U.S. ---, 135
 11 S. Ct. 547, 554 (2014)).

12 19. “[A] defendant’s notice of removal need only include a plausible allegation that
 13 the amount in controversy exceeds the jurisdictional threshold.” *Dart*, 135 S. Ct. at 554 (2014).
 14 In measuring the “amount in controversy,” the court assumes that Plaintiff will prevail on each
 15 cause of action alleged in the complaint. *See Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413,
 16 414-15 (9th Cir. 2018) (“the amount in controversy . . . encompasses all relief a court may grant
 17 on that complaint if the plaintiff is victorious”). Evidence of the amount in controversy is
 18 required only when the plaintiff contests, or the court questions, the defendant’s allegation.
 19 *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015). In that circumstance, “[t]he
 20 parties may submit evidence outside the complaint, including affidavits or declarations, or other
 21 summary-judgment-type evidence relevant to the amount in controversy at the time of removal.”
 22 *Ibarra*, 775 F.3d at 1198.

23 20. Courts routinely accept as sufficient declarations providing adequate evidence in
 24 support of a defendant’s allegation that the amount in controversy is met. *See, e.g., Watkins v.*
 25 *Vital Pharm., Inc.*, 720 F.3d 1179, 1181 (9th Cir. 2013) (defendant’s uncontested declaration
 26 that sales of the product in dispute exceeded \$5 million per year was sufficient to establish the
 27 CAFA threshold); *Rea v. Michaels Stores Inc.*, 742 F.3d 1234, 1239 (9th Cir. 2014) (holding
 28 declarations were sufficient to establish amount in controversy exceeded \$5 million). Based on

1 the allegations of the Complaint and the information contained in ACI's regularly maintained
 2 business records, CAFA's amount in controversy requirement is met. Plaintiff does not allege a
 3 specific amount in controversy in the Complaint. A defendant, however, is entitled to rely upon a
 4 reasonable chain of reasoning and assumptions based on the allegations of the complaint to
 5 establish the amount in controversy. *See LaCross v. Knight Transp., Inc.*, 775 F.3d 1200, 1202
 6 (9th Cir. 2015).

7 21. Plaintiff alleges that the Laptops suffered a defect in the "normal operation of the"
 8 Laptops that could not be fixed, thereby making the Laptops "unfit for ordinary use." **Exhibit A**
 9 (Complaint), ¶¶ 40, 43, 54, 57. Plaintiff further alleges that had he and the putative nationwide
 10 class known about the alleged defect, he and the class either would have paid significantly less for
 11 the Laptops or would not have purchased them at all. **Exhibit A** (Complaint), ¶¶ 112, 119, 153.
 12 Plaintiff seeks, alternatively: (1) the return of all payments made by class members to defendants
 13 (**Exhibit A** (Complaint), ¶ 141); (2) the difference between the price they paid for the Laptops
 14 and the price they would have paid had they known about the defect, which is presumably a full
 15 refund because Plaintiff alleges that he and the class would not have purchased the Laptops had
 16 they known about the defect, (*id.*, ¶ 153); or (3) the "replacement costs," which, fairly interpreted,
 17 is the cost of replacement Laptop (*id.*, ¶ 112).

18 22. Defendant ACI sold 23,196 Laptops during the four year period preceding the
 19 filing of the Complaint, of which 12,758 were model GL502VS laptops and 10,438 were model
 20 GL502VSK laptops. *See Exhibit D* (Meng Decl.), ¶ 5. Plaintiff alleges that the "starting" sales
 21 price for the Laptops was \$1,600. **Exhibit A** (Complaint), ¶ 45; *see also Exhibit D* (Meng
 22 Decl.), ¶ 5 (stating manufacturer's suggested retail price was approximately \$1,700 and online
 23 price to consumers was \$1,699). Accordingly, the allegations of the Complaint fairly put the
 24 purchase price of the Laptops, or more than approximately \$37,000,000, in controversy. CAFA's
 25 amount in controversy requirement is satisfied. *See Stern v. RMG Sunset, Inc.*, No. 17-CV-1646
 26 JLS (NLS), 2018 WL 2296787, at *3-6 (C.D. Cal. May 21, 2018) (finding amount in controversy
 27 satisfied because allegation that plaintiff would not have purchased the meal in question had he
 28 known about an undisclosed service fee put full cost of meal in controversy).

1 **III. COMPLIANCE WITH REMOVAL STATUTE**

2 **23. Removal to Proper Court.** Assignment to this Court is proper because it is part
 3 of the “district and division” embracing the place where the State Court Action was filed –
 4 Superior Court, Alameda County. *See* 28 U.S.C. § 1446(a).

5 **24. Removal is Timely.** This Notice of Removal is timely under 28 U.S.C. section
 6 1446(b)(3) because it is being filed within thirty (30) days of ACI’s receipt of Plaintiff’s
 7 Complaint through service of process or otherwise, which occurred on May 8, 2018.

8 **25. Pleadings and Process.** Pursuant to 28 U.S.C. section 1446(a), attached hereto as
 9 **Exhibits A and B** is a copy of the docket and all process, pleadings, and orders served on
 10 Defendants in the State Court Action.

11 **26. Filing and Service.** Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of
 12 Removal is being served upon Plaintiff in the State Court Action and a copy, along with a
 13 Notice of Filing of Notice of Removal, is being filed with the Clerk of the Superior Court of
 14 California, Alameda County. A copy of said Notice of Filing of Notice of Removal (without
 15 exhibits) is attached hereto as **Exhibit C**.

16 **27. Other Defendants.** Consent to removal is not required with respect to removal
 17 under CAFA. *See* 28 U.S.C. § 1453(b). The Doe defendants are disregarded for the purposes of
 18 removal. *See* 28 U.S.C. §§ 1441(b), 1446(b)(2)(A).

19 **28. Proper Signature.** Counsel for ACI hereby certifies, pursuant to 28 U.S.C.
 20 section 1446(a), that this Notice of Removal is signed pursuant to Rule 11 of the Federal Rules
 21 of Civil Procedure.

22 **29.** Based upon the foregoing, this Court has jurisdiction over this matter pursuant to
 23 28 U.S.C. section 1332(d), and the claims may be removed to this Court under 28 U.S.C. section
 24 1441(a).

25 **IV. REQUEST FOR ADDITIONAL ARGUMENTS AND EVIDENCE, IF
 26 NECESSARY**

27 **30.** In the event that Plaintiff files a request to remand, or the Court considers
 28 remand *sua sponte*, ACI respectfully requests the opportunity to submit additional argument or

1 evidence in support of removal.

2 WHEREFORE, this action should proceed in the United States District Court for the
3 Northern District of California, as an action properly removed thereto.

4

5 Dated: June 7, 2018

Respectfully submitted,

6

7

By: /s/ Robert B. Bader

8

LUANNE SACKS
MICHELE FLOYD
ROBERT B. BADER
SACKS, RICKETTS & CASE LLP

9

10

11

12

Attorneys for Defendant
ASUS COMPUTER INTERNATIONAL,
incorrectly sued as ASUS Computer
International (North America), Inc.

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28